

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

KENNETH DEBARROS,)	
)	
Petitioner,)	
)	
v.)	C.A. No. 04-12158-MLW
)	
UNITED STATES OF AMERICA,)	
)	
Respondent.)	

ORDER

WOLF, D.J.

June 22, 2005

Pursuant to Rule 4(b) of the Rules Governing Section 2255 Proceedings, the petitioner's Motion to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody is hereby ORDERED DISMISSED. The petitioner has challenged the computation of his sentence under the Federal Sentencing Guidelines pursuant to the decision in Blakely v. Washington, __ U.S. __, 124 S.Ct. 2531 (2004). Blakely claims are now viewed through the lens of United States v. Booker, __ U.S. __, 125 S.Ct. 738 (2005).

The court notes that the petitioner filed his motion more than a year after his conviction. Therefore, the statute of limitations bars any claim other than those related to rights newly recognized by the Supreme Court and made retroactively applicable on collateral review, 28 U.S.C. §2255(3), or any claim otherwise included under 28 U.S.C. §2255(2) or (4). The First Circuit has

held that Booker is not to be retroactively applied. Cirilo-Munoz v. United States, 404 F.3d 527, 533 (1st Cir. 2005). The petitioner's Motion is, therefore, hereby DISMISSED.

/s/ Mark L. Wolf

UNITED STATES DISTRICT JUDGE